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FIRST APPEAL NO. 557/95 TO 579/95

Date of Decision : 27.03.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R.DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circulated to the Civil Judge ?

Sr.Advocate Mr.M.R.Anand, learned GP with Mr. A.J.Desai, learned AGP for the Appellants.

Mr.G.M.Amin, learned Advocate for the Respondent.

CORAM : N.J.PANDYA & A.R DAVE,JJ.
27.3.1996

ORAL COMMON JUDGMENT : [Per : Dave, J]

The appellants have disputed the legality and validity of the common judgment delivered in Land Ref.Case Nos. 321/87 to

343/87 dated 31st August 1994 delivered by the learned Assistant Judge, Mehsana whereby the amount of compensation awarded by the Spl. Land Acq. Officer, Dist.: Mehsana has been substantially enhanced. In all Land Ref. Cases which are the subject matter of the above appeals, were consolidated and a common judgment was delivered. With consent of the learned advocates, the above appeals are also heard together and disposed of by this common judgment.

The facts leading to the acquisition of the lands in question are as under :-

Notification under Sec.4 of The Land Acq. Act, 1894 (hereinafter referred to as " the Act") was published on 15th November 1979 so that the present appellants can acquire the lands in question for the purpose of construction of residential houses for different classes of persons. The lands were acquired by Ahmedabad Urban Development Authority (AUDA)- appellant no.2 herein. The lands in question are situated at the northern side of village Kalol. Notification under Sec.6 of the Act was published on 10th November 1982. After hearing the claimants, The Spl. Land Acq. Officer had declared his award on 23rd September 1986. He was pleased to award Rs. 13 to Rs. 25 per sq. mt. for different lands.

As the claimants- present opponents found the said amount to be meagre, a reference was made and ultimately by a common judgment in Land Ref. Case Nos. 321/87 to 343/87, the learned Assistant Judge, Mehsana was pleased to enhance the amount of compensation by virtue of his common judgment dated 31st August 1994, which is under challenge. The claimants were awarded compensation at the rate of Rs.68/ to Rs.70/ per sq.mt. by dividing the lands in question in to three different groups.

Being aggrieved by the above-referred common judgment delivered by the learned Assistant Judge, Mehsana, the appellants have approached this Court.

Our attention was drawn by Sr. Advocate Mr. M.R.Anand to a judgment delivered by this Court (Coram : M.B.Shah as he then was & N.N. Mathur, JJ) in First Appeal Nos. 492/95 to 555/95 & 556/95 dated 14th July 1995. It was submitted by Mr. Anand that the lands which were the subject matter of the above-referred appeals and the lands which are the subject matter of the present group of appeals, are almost similarly situated and as the above-referred lands were acquired for the same purpose and as notifications under sec. 4 & 6 of the Act were also issued on the same dates, the findings arrived at in the above-referred First Appeals should be looked into by this Court.

We have perused the papers of First Appeal Nos. 492/95

to 555/95 & 556/95 referred to hereinabove and have found that the lands which are the subject matter of the present appeals and the lands which were the subject matter of the group of First Appeals referred to hereinabove, are situated in the same vicinity and , therefore, we can take due advantage of a detailed comprehensive judgment delivered by this Court in the above-referred First Appeals. After considering several authorities and after appreciating evidence adduced before the trial court, this Court had determined market value of the lands which can very-well be compared with the lands which are the subject matter of these appeals.

In the circumstances, we are of the view that for the purpose of determining market value of the lands in question, the decision rendered by this Court on 14th July 1995 in the above-referred First Appeals should be duly considered and market value of the lands in question should be determined on the basis of the findings arrived at in the above-referred First Appeals.

Learned Advocate Shri G.M. Amin vehemently submitted that the lands which are the subject matter of the present appeals cannot be compared with those which were the subject matter of the appeals decided on 14th July 1995 for the reason that the lands with which are dealing at present, are situated in or near the village site of village Kalol. As per his submission, higher amount must be awarded for the lands in question than what was awarded in the above-referred First Appeals.

It was further submitted by the learned Advocate Shri G.M. Amin that in view of the judgment delivered by this Court (Coram : B.K.Mehta & D.H.Shukla, JJ) in F.A.No. 1112/75 dated 24.7.1984, the market value of the land in question arrived at by the Courts below was just and proper. He had drawn our attention to the above referred judgment, a copy of which is at exh.38.

It was further submitted by learned Advocate Shri G.M. Amin, that upon close scrutiny of exh.69 & 73 - sale instances, the market value of the land in question ought to have been determined at a higher rate as lands which were the subject matter of the above-referred exhibits were sold at much higher price in 1975. As per sale-deed exh.69, market value of land which was the subject matter of the said sale-deed, was Rs. 2028/ on 3.4.1990, whereas as per exh.73, one sq.mt. of land was sold at Rs. 79.74 on 30.1.1975.

In the above circumstances, learned Advocate Shri G.M. Amin had vehemently argued that value arrived at by the Reference Court of the land in question was just and proper and, therefore, the appeals filed by the government authorities should be dismissed.

On the other hand, Sr. Advocate Mr. M.R. Anand, learned GP had drawn our attention to the record of First Appeals which are referred to hereinabove so as to have a better idea of the situation of the lands which are the subject matter of these appeals and the lands which were the subject matter of the appeals decided on 14th July 1995.

It was submitted by Sr. Advocate M.R. Anand that the judgment referred to by the learned Advocate Shri G.M. Amin was not relevant for the reason that the land which was subject matter of the said judgment and land which was subject matter of present appeals, cannot be compared. F.A. No. 1112/75 was concerned with the land which was situated near S.T. Bus-stand in Kalol. S.T. Bus-stand is situated almost in the heart of Kalol town whereas the land which are the subject matter of the present group of appeals is at or near the periphery of the town. Moreover, the land which are the subject matter of the present group of appeals are agricultural land and, therefore, they cannot be compared with a piece of non-agricultural land situated in a heart of the city near S.T. Bus-stand.

It was further submitted by Sr. Advocate Shri M.R. Anand that exh.69 & 73 relied upon by the learned Advocate Shri Amin can also not be relied upon for the purpose of determination of market value of the lands in question. Exh.69 refers to sale of N.A. plot admeasuring 170 sq.mts. which was purchased by Mehsana Co.Op.Bank Ltd. The said land is situated near the Station Road and plenty of business activities are going on near the said land. It is merely a plot of land which was being used for N.A. purpose.

Similarly, exh.73 pertains to sale of N.A. land admeasuring approximately 2500 sq.mts. and, therefore, the said land also cannot be compared with land in question which are big parcels of agricultural lands.

Thus, it is clear that the land which are the subject matter of present group of appeals, cannot be compared with the land which are subject matter of above-referred exhibits referred to by the learned Advocate Shri Amin.

In the present group of appeals, evidence was led in Land Ref. Case No. 332/87 which was treated as main case by the learned Assistant Judge, Mehsana. Upon perusal of the record, we find that the development plan of Kalol is produced along with list at exh.20 by the original claimant. The said plan covers the lands which are the subject matter of the present appeals as well as lands which were the subject matter of above-referred appeals decided by this Court on 14th July 1995. In the

circumstance, especially when detailed map of the land in question is not available on record or the present proceedings, with the consent of concerned advocates, we have perused said development plan so as to find out the situation of the lands in question so that they can be very-well compared with the lands which were the subject matter of First Appeal Nos. 492/95 to 555/95 and 556/95.

The above-referred development plan has made our task easy especially in view of the judgment dated 14th July 1995 in the above-referred appeals which elaborately appreciates and discusses the evidence adduced before the reference court in earlier group of matters.

Upon perusal of the above-referred judgment and development plan referred to herein above, it is clear that the lands in question and other lands which were the subject matter of the other appeals are situated at the periphery of village site of village Kalol. The lands in question are situated on the northern side of village site of Kalol whereas the other lands which were the subject matter of above-referred First Appeals are situated on the southern side as well as south-west side of village site of Kalol.

The lands which were the subject matter of the another group which were on the southern side of village Kalol were abutting National Highway No.8 and market value thereof was determined at Rs.40/ per sq.mt. whereas the lands which were not abutting to the national highway, but were relatively nearer to the national highway, were valued at Rs. 37/ per sq.mt. and other lands which were at a reasonable distance from the national highway and were at the interior side where there were less development, were valued at Rs. 35/ per sq.mt. It is also pertinent to note that the lands which were little farther from the lands abutting national highway, but which were abutting main road leading to Rancharda from Kalol, were valued at Rs. 37/ per sq.mt.

Thus the lands were divided into three different groups in aforesaid group of appeals viz.:-

- (i) lands abutting national highway valued at Rs.40/- per sq.mt.;
- (ii) lands which were not abutting, but were not much away from national highway and lands which were abutting main road leading to village Rancharda were valued at Rs. 37/ sq.mt.;
- (iii) lands which were away from national highway were valued at Rs. 35/- per sq.mt.

Sr. Advocate Mr. Anand had vehemently argued that the

lands which are subject matter of the present appeals are far away from National Highway No.8 and, therefore, looking to the findings arrived at in First Appeal Nos. 492/95 to 555/95 and 556/95, the claimants of the present group should be awarded Rs.35/ per sq.mt. for the lands in question. He had submitted that the learned Asstt.Judge, Mehsana had erred while determining the value of the lands in question on higher side and, therefore, the market value of the lands in question should be determined at Rs. 35/- per sq.mt.

Learned Advocate Shri Amin vehemently objected to the submissions made by Sr.Advocate Mr. Anand by submitting that though the lands which are subject matter of the present appeals are away from National Highway No.8, relatively they are nearer to the village site of Kalol and, therefore, the lands should be valued even at higher rate. He has drawn our attention to the fact that the area where the lands in question are situated is a fast developing area and several construction activities going on in the vicinity. In the circumstances, he had submitted that the market value arrived at by the learned Assistant Judge, Mehsana was just and proper and the appeals filed by the Acquiring Body and the Special Land Acq.Officer should be dismissed.

Upon perusal of the development plan referred to hereinabove, it can very-well be seen that the lands which are the subject matter of the present appeals are away from national highway and, therefore, they cannot be compared with the lands abutting national highway. Sr. Advocate Mr. Anand is right to certain extent when he submitted that the lands in question are at a distance from national highway and, therefore, the market value of the lands in question should not be determined more than Rs.35/- per sq.mt. On the other hand, we also find some substance in the submission made by learned Advocate Shri Amin that though the lands are away from national highway, they are nearer to village site of village Kalol and, therefore, the lands in question should be valued at a higher rate.

After considering rival contentions and submissions and upon perusal of development plan in question and judgment delivered in aforesaid group of matters, we are of the view that though the lands which are the subject matter of the present appeals are not abutting National HighwayNo.8, the market value of the lands in question should be determined at Rs. 40/- per sq.mt. in view of the fact that they are not much away from the village site land of village Kalol.

The lands which are subject matter of above-referred group of appeals which were abutting national highway, were valued at Rs. 40/- per sq.mt. for the reason that there were more development activities near highway and, therefore, they were valued at a higher rate. The lands which are away from

highway were valued at Rs. 35/- per sq.mt.

In the instant case, though the lands in question are not abutting national highway, their value would be relatively more compared to the lands situated away from the highway for the reason that the lands in question are on the northern side of village site of village Kalol. Proximity of village site is also a relevant consideration for determining its market value and looking to the facts of the case, we determine the market value of the lands in question at Rs. 40/- per sq.mt.

In the circumstances, the appeals are allowed. It is accordingly directed that the claimants should be paid Rs.40/per sq.mt. towards compensation for the lands acquired. The claimants are further entitled to recover solatium at the rate of 30% on the amount of compensation under sec. 23(2)(o) of the Act with 12% further compensation from the date of the notification under sec.4 of the Act till the date of Award or till the date of taking possession of the lands whichever is earlier under sec.23(I-A) of the Act and 9% interest on the additional amount of compensation for the first year from the date of taking possession and thereafter interest at the rate of 15% p.a. till the payment of compensation as per the amended Sec.28 of the L.A. Act.

Appeals are allowed accordingly.

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